

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 407

Introduced by Assembly Member Correa

February 20, 2001

An act to amend Section 50126 of, *and to add Division 21 (commencing with Section 60000) to*, the Financial Code, relating to residential mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 407, as amended, Correa. Residential mortgage lending.

The California Residential Mortgage Lending Act *provides for the regulation and licensure of residential mortgage lenders and residential mortgage loan services by the Commissioner of Corporations. The act* requires a residential mortgage lender to file an application for licensure with the ~~Commissioner of Corporations~~ *commissioner* in order to make or service residential mortgage loans in this state. The act requires the commissioner to issue a license or a specified statement of issues within 60 days of the filing of a full and complete application for a license.

This bill would instead require the commissioner to issue that license or specified statement within 45 days of the filing of a full and complete application for a license.

This bill would enact the Consumer Equity Protection Act that would impose various requirements on lenders and covered loans, as defined. The bill would place limits on the imposition of prepayment fees or penalties on covered loans by a lender. The bill would prohibit a lender from making a covered loan unless a specific notice is provided to the persons that would be required to pay the loan. The bill would impose

a similar notice requirement on a lender before the lender could sell an individual or group credit life, accident and health, or disability or unemployment insurance product. The bill would also require a lender or its servicer to report information on a consumers favorable and unfavorable payment history to a nationally recognized consumer credit reporting agency.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 50126 of the Financial Code is amended
2 to read:
3 50126. (a) Upon reasonable notice and opportunity to be
4 heard, the commissioner may deny an application for any of the
5 following reasons:
6 (1) A false statement of a material fact has been made in the
7 application.
8 (2) Any officer, director, general partner, or person owning or
9 controlling, directly or indirectly, 10 percent or more of the
10 outstanding interests or equity securities of the applicant has,
11 within the last 10 years, (A) been convicted of, or pleaded nolo
12 contendere to, a crime or (B) committed any act involving
13 dishonesty, fraud, or deceit, if the crime or act is substantially
14 related to the qualifications, functions, or duties of a person
15 engaged in business in accordance with this division.
16 (3) The applicant or any officer, director, general partner, or
17 person owning or controlling, directly or indirectly, 10 percent or
18 more of the outstanding interests or equity securities of the
19 applicant, has violated any provision of this division or the rules
20 thereunder or any similar regulatory scheme of the State of
21 California or a foreign jurisdiction.
22 (b) The application shall be considered withdrawn within the
23 meaning of this section if the applicant fails to respond to a written
24 notification of a deficiency in the application within 90 days of the
25 date of the notification.
26 (c) The commissioner shall, within 45 days from the filing of
27 a full and complete application for a license, including the receipt
28 of background and investigative reports from the Department of
29 Justice or other government agencies, and the payment of the fees



1 required by Section 50121, issue either a license or a statement of
2 issues prepared in accordance with Chapter 5 (commencing with
3 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
4 Code.

5 *SEC. 2. Division 21 (commencing with Section 60000) is*
6 *added to the Financial Code, to read:*

7
8 *DIVISION 21. CONSUMER EQUITY PROTECTION ACT*

9
10 *CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS*

11
12 *60000. This division shall be known and may be cited as the*
13 *Consumer Equity Protection Act.*

14 *60001. (a) "Affiliate" means an entity that controls by, or is*
15 *under common control with another entity, as determined under*
16 *the Federal Bank Holding Company Act (12 U.S.C. SEC. 1841 et*
17 *seq.). "Affiliate" shall not include any entity whose predominant*
18 *business is the providing of tax deferred, defined contribution,*
19 *pension plans to public employees in accordance with Sections*
20 *403 (b) and 457 of the Internal Revenue Code of 1954 (26 U.S.C.*
21 *Secs. 403 and 457).*

22 *(b) "Bridge loan" means temporary or short-term financing*
23 *with payments of interest only until the time that the entire unpaid*
24 *balance is due and payable.*

25 *(c) "Covered loan" means a consumer credit mortgage loan*
26 *transaction, involving property located within this state, that is*
27 *considered a "mortgage" under the Home Ownership and Equity*
28 *Protection Act of 1994 (15 U.S.C. Sec. 1639), and regulations*
29 *adopted pursuant thereto by the Federal Reserve Board, including*
30 *Section 226.32 of Title 12 of the Code of Federal Regulations.*

31 *(d) "Lender" means any individual or entity that in any*
32 *12-month period originates one or more than one covered loan.*
33 *The individual or entity to whom the covered loan is initially*
34 *payable, either on the face of the note or contract, or by agreement*
35 *when there is no note or contract, shall be deemed to be the lender.*

36 *(e) "Mortgage broker" means a person who for compensation*
37 *brings an obligor and lender together to obtain a covered loan and*
38 *who is not an employee or exclusive agent of a lender or its*
39 *affiliate.*

(f) “Ninety-day period” means the period beginning on the day notice is provided under Chapter 3 of this division and ending 90 days later.

(g) “Obligor” means each obligor, coobligor, cosigner, or grantor obligated to repay a covered loan.

(h) “Principal balance” means the amount financed plus prepaid finance charges as defined in the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.).

(i) “Servicer” has the same meaning provided in Section 6 (I)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Sec. 2601 et seq.).

CHAPTER 2. COVERED LOAN TERMS

60010. (a) A covered loan shall not contract for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments unless the payment becomes due and payable not less than 120 months after the date of the loan. This prohibition shall not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with, or related to, the acquisition or construction of a dwelling intended to become the obligor’s principal dwelling.

(b) A covered loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition shall not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision or pursuant to some other provision of the loan agreement, or where there is fraud or material misrepresentation by an obligor in connection with the loan, or where there is any action or inaction by the obligor that adversely affects the lender’s security for the loan or any rights of the lender in the security.

(c) A covered loan shall not contract for a payment schedule with regular periodic payments that cause the principal balance to increase. This prohibition shall not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(d) A covered loan shall not contract for any increase in the interest rate after default. This provision shall not apply to periodic interest rate changes in a variable rate loan otherwise consistent

1 *with the provisions of the loan agreement, provided the change in*
2 *the interest rate is not occasioned by the event of default or a*
3 *permissible acceleration of the indebtedness.*

4 *(e) A covered loan shall not be subject to a mandatory*
5 *arbitration clause that does not satisfy the following:*

6 *(1) Comply with the rules set forth by a nationally recognized*
7 *arbitration organization.*

8 *(2) Require the arbitration proceeding to be conducted within*
9 *the federal judicial district in which the subject property is located,*
10 *at the city nearest the obligor's residence where a federal district*
11 *court is located or at another location that is mutually agreed to*
12 *by the parties.*

13 *(3) Require the lender to contribute at least 50 percent of the*
14 *amount of any filing fee.*

15 *(4) Require the lender to pay standard daily arbitration fees,*
16 *including its own and those of the obligor, for at least the first day*
17 *of arbitration.*

18 *(f) A covered loan shall not include terms under which any*
19 *periodic payments required under the loan are paid in advance*
20 *from the loan proceeds provided to the obligor.*

21 *60011. (a) A prepayment fee or penalty shall not be assessed*
22 *except during the first 60 months after the date of execution of a*
23 *covered loan.*

24 *(b) A lender shall not include a prepayment fee in a covered*
25 *loan unless it offers the obligor the option of choosing a loan*
26 *product without a prepayment fee.*

27 *(c) A prepayment fee or penalty shall not be charged on a*
28 *refinancing of a covered loan if the covered loan being refinanced*
29 *is owned by the refinancing lender or its affiliate at the time of such*
30 *refinancing.*

31
32 *CHAPTER 3. PROHIBITED ACTS*
33

34 *60020. (a) A lender shall not make a covered loan unless the*
35 *lender or a mortgage broker has given the following notice, or a*
36 *substantially similar notice, in writing to the obligor within a*
37 *reasonable time of determining that the loan would result in a*
38 *covered loan but no later than the time the notice is required under*
39 *the notice provision contained in subdivision (c) of Section 226.32*
40 *of Title 12 of the Code of Federal Regulations:*

Notice to Borrower

If you obtain this loan, the Lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your employment history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could also vary based on which lender or broker you select. As an obligor, you should shop around and compare loan rates and fees.

You should also consider consulting a qualified independent credit counselor or other experienced financial advisor regarding the rate, fees, and provisions of this mortgage loan before you proceed. A list of qualified counselors is available by contacting (insert name, address and phone number of an appropriate state or city agency that maintains a list of qualified counselors).

You are not required to complete this loan agreement merely because you have received these disclosures or have signed a loan application.

Borrowing for the purpose of debt consolidation can be an appropriate financial management tool. However, if you continue to incur significant new credit card charges or other debts after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Remember, property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Also, your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

(b) A lender shall not engage in a pattern or practice of extending credit to consumers under mortgages based on the consumers' collateral without regard to the consumers' repayment ability, including, but not limited to, the consumers' current and expected income, current obligations, employment status, and financial resources other than the obligor's equity in the dwelling which secures repayment of the loan.

1 (c) A lender shall not charge any points in connection with a
2 covered loan if the proceeds of the covered loan are used to
3 refinance an existing covered loan held by the lender and the last
4 financing was within one year of the current refinancing. This
5 subdivision shall not prohibit a lender from charging points in
6 connection with any additional proceeds received by the obligor
7 in connection with the refinancing. For purposes of this
8 subdivision, “additional proceeds” for a closed end loan is the
9 amount over and above the current principal balance of the
10 existing covered loan. If a lender refunds all the points on the
11 covered loan being refinanced, the “additional proceeds” shall be
12 the principal balance of the new covered loan.

13 (d) A lender shall not replace or consolidate a zero interest rate,
14 or other low-rate loan made by a governmental or nonprofit lender
15 with a covered loan within the first 10 years of the low-rate loan
16 unless the current holder of the loan consents in writing to the
17 refinancing. For purposes of this subdivision a “low-rate” loan is
18 a loan that carries a current interest rate two percentage points or
19 more below the current yield on treasury securities with a
20 comparable maturity. If the loan’s current interest rate is either a
21 discounted introductory rate or a rate that automatically steps up
22 over time, then the fully indexed rate or the fully stepped up rate,
23 as appropriate, should be used, instead of the current rate, to
24 determine whether the loan is a low-rate loan.

25 (e) A lender shall not pay a contractor under a
26 home-improvement contract from the proceeds of a covered loan
27 other than by an instrument payable to the obligor or jointly to the
28 obligor and the contractor or, at the election of the obligor, through
29 a third-party escrow agent in accordance with terms established
30 in a written agreement signed by the obligor, the lender, and the
31 contractor prior to the disbursement of funds to the contractor.

32 60021. A lender shall not sell any individual or group credit
33 life, accident and health, disability or unemployment insurance
34 product on a prepaid single premium basis in conjunction with a
35 covered loan unless the following conditions are met:

36 (a) Eighteen months after the operative date of this division or
37 after the period necessary to secure any necessary approvals for
38 a monthly premium credit insurance product from the insurance
39 commissioner, a lender that offers any individual or group credit
40 life, accident and health, disability or unemployment insurance

1 *products purchased on a prepaid single premium basis in*
2 *conjunction with a covered loan shall offer the obligor the option*
3 *of purchasing all such insurance on a monthly premium basis.*

4 *(b) A lender shall not sell credit life, accident and health,*
5 *disability or unemployment insurance products in conjunction*
6 *with a covered loan, other than where the insurance premiums are*
7 *calculated, earned and paid on a monthly or other regular,*
8 *periodic basis, unless the following disclosure, or a substantially*
9 *similar disclosure, is provided no later than the time of closing:*

10
11 *INSURANCE NOTICE TO BORROWER*
12

13 *You have elected to purchase credit life, accident and health,*
14 *disability or unemployment insurance in conjunction with this*
15 *mortgage loan. The cost of this insurance is being prepaid and*
16 *financed at the interest rate provided for in the loan.*

17 *This insurance is NOT required as a condition of closing this*
18 *loan and has been included with the loan at your request.*

19 *At any time you have the right to cancel any or all such policies*
20 *purchased in conjunction with this loan. You may cancel your*
21 *policy or policies by signing and returning a copy of this notice to*
22 *your lender or you may contact your lender directly.*

23 *If you cancel your insurance within 30 days of the date of your*
24 *loan, then you will receive either a full refund or a credit against*
25 *your loan account. If you cancel your insurance at any other time,*
26 *you will receive either a refund or a credit against your loan*
27 *account of any unearned premium.*

28 *YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF*
29 *THE LOAN TO RECEIVE A FULL REFUND.*

30
31 *CREDIT INSURANCE CANCELLATION*
32

33 *I (we) request that the lender cancel the _____*
34 *@@@ insurance that I (we) purchased in conjunction with my (our)*
35 *mortgage loan dated _____.*

36
37 *Borrower*

Date

38
39 *(c) If an obligor elects to cancel, within 30 days of the date of*
40 *the covered loan, any individual or group credit life, accident and*

1 *health, disability or unemployment insurance product purchased*
2 *on a prepaid single premium basis in conjunction with a covered*
3 *loan, the lender or the insurance company who sold the insurance*
4 *or the insurance company providing the product, shall give the*
5 *obligor a full premium refund or a full premium credit to the unpaid*
6 *loan balance. If the obligor elects to cancel any individual or*
7 *group credit insurance purchased in conjunction with a covered*
8 *loan at any other time, the refund or credit shall be computed as*
9 *provided or permitted by state law. The lender or insurance*
10 *company shall decide whether the return of premium is to be by*
11 *means of credit to the account or by refund to the obligor.*

12 *For purposes of this division, the term credit life insurance does*
13 *not include any type of life insurance sold by the lender where the*
14 *obligor chooses the primary beneficiary.*

15
16 *CHAPTER 4. MISCELLANEOUS PROVISIONS*
17

18 *60030. (a) A lender or its servicer shall report, at least*
19 *quarterly, both the favorable and unfavorable payment history*
20 *information of the obligor on payments due to the lender on a*
21 *covered loan to a nationally recognized consumer credit reporting*
22 *agency. This subdivision shall not prevent a lender or its servicer*
23 *from agreeing with the obligor not to report unfavorable payment*
24 *history information.*

25 *(b) A lender shall perform a review of the background of each*
26 *mortgage broker with whom it does business in connection with*
27 *covered loans.*

28 *60031. (a) In the interest of providing uniform laws and*
29 *remedies relating to residential loans in this state, and*
30 *notwithstanding the grant of powers by this state to cities or*
31 *counties, no city or county shall exercise powers contrary to, or in*
32 *limitation or enlargement of, the provisions of this division.*

33 *(b) Notwithstanding any other provision of law, covered loans*
34 *shall be regulated by the provisions of this division exclusively.*